

BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

TEAMSTERS, LOCAL 610,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 97-027
)	
FESTUS SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of Teamsters, Local 610 (hereinafter referred to as the Union) to represent the bus drivers employed by the Festus School District (hereinafter referred to as the District). A hearing on the matter was held on July 9, 1997 in Festus, Missouri, at which representatives of the Union and the District were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member LeRoy Kraemer, and employer member Lois Vander Waerdt. At the hearing the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, Order, and Direction of Election.

FINDINGS OF FACT

The Festus School District operates a public school system for approximately 2,500 students. About 1,300 of those students are transported to and from school each day by district buses. In order to provide this transportation, the district owns 30 school buses. It employs bus

drivers to drive these buses and transport the students to and from school. The district's bus drivers are categorized as regular or substitute drivers. Each of these categories is reviewed below.

The district's 22 regular drivers are classified as single route or double route drivers. Single route drivers, as the name implies, drive only one route during the morning and afternoon. Single route drivers work about 17 hours a week. Double route drivers, as the name implies, drive two routes: first they drive a route wherein they pick up and deliver middle school and high school students, and then they drive a second route wherein they pick up and deliver elementary school students. Double route drivers work about 22 hours a week. These double routes are made possible due to the staggered starting times of the various schools in the District. When a regular driver is hired by the District, they are initially assigned to a single route. When a double route becomes available, it is offered to the most senior of the regular single route drivers.

When a regular driver cannot report to work, the District has to have someone else drive that route so that the students on that route are still timely delivered to and from school. This happens an average of 45 to 50 times a month or about 12 times a week. The District fills these routes in the following ways. On some occasions, the District uses another regular driver who knows all of the District's bus routes. On other occasions, single route (regular) drivers can be assigned to double routes in various combinations so that all the routes are covered. On other occasions, the District uses other District employees such as custodians, teachers, and clericals who are qualified to drive buses (i.e. possess a commercial driver's license and a school bus driver's permit). On still other occasions, the District covers the route by using a substitute driver. The substitute drivers will be addressed in more detail below. The District's transportation supervisor decides in each given situation which of the foregoing methods will be used to cover a route when the regular driver is gone.

As just noted, the District employs people who work exclusively as substitute bus drivers. The substitute drivers are totally separate from the regular drivers previously referenced. The number of substitute drivers varies yearly from seven to ten. In the 1996-97 school year, the District had nine individuals on its list of substitute drivers. The District attempts to limit inclusion on the substitute list to those who will usually accept assignments. The individuals on the current substitute list became substitutes in one of the following ways. Some were formerly regular drivers who wanted to change their status to that of a substitute so that they did not have to drive everyday. Other substitutes have never worked as regular drivers but instead simply applied to be substitute drivers. All substitutes except one are required to possess the same qualifications as the regular drivers possess, namely a commercial driver's license and a school bus driver's permit. The exception is substitute driver Linda Sander who does not have a commercial driver's license or school bus driver's permit. She only substitutes on a route for the transportation of handicapped students. This route is not serviced with a school bus; instead, a District car or van is used. Thus, no commercial driver's license or school bus driver's permit is needed for this particular route.

The regular bus drivers and the substitute bus drivers are similar in the following respects. They all drive the same buses, drive the same routes, receive the same pay where they are paid by the route, have the same qualifications (a commercial driver's license and a school bus driver's permit)¹, and are supervised by the same people, namely assistant superintendent Bob Pryor and transportation supervisor Joe Seyfarth. Additionally, neither has priority over the other. In other words, the regular drivers do not have priority over the substitutes or vice versa.

The regular bus drivers and the substitute drivers differ in the following respects. First, they differ in the amount of notice they receive before driving. The regular bus drivers report to work daily to drive their preassigned route(s). They therefore know in advance that they are going

to drive a route each school day. The substitute drivers do not report to work though unless they are called to do so. Thus, the substitute drivers are not guaranteed a route each day while the regular drivers are. As a result, the substitutes do not know when they will be driving for the District. The amount of notice given to the substitutes varies from as little as 30 minutes to as much as two days, depending on the circumstances of the cancellation of the regular driver. Second, when a substitute receives a call offering them work, they have the discretion to reject the offer. In contrast, the regular drivers are obligated to drive a bus each and every day. While the substitutes can reject the offered work, they usually accept it. If another occupation prevents them from driving bus routes for a particular period of time, they inform the District's transportation supervisor (Seyfarth) of same so that he does not call them during that time period. For example, substitute Dwane Stark is a farmer, and he informs Seyfarth when his farming work will prevent him from being available to drive a bus. Another substitute, Shirley Radford, works on a river boat and is gone with that job for a month at a time. She likewise informs Seyfarth when she will not be available to drive a bus. Radford is a former regular driver who has been a substitute for ten years. Another substitute, Mike Woolard, works for the railroad and is gone with that job for weeks at a time. He likewise informs Seyfarth when he will not be available to drive a bus. Like Radford, Woolard is a former regular driver. Third, the regular drivers and the substitute drivers differ in their driving frequency with regular drivers driving more than the substitutes. The record does not identify how many routes were driven by each of the 22 regular drivers. The record does indicate though that Lynn Weiss, a regular single route driver, drove 131 singles and 155 doubles for a total of 286 routes in the 1996-97 school year. The record indicates that the nine substitute drivers who were used by the District in the 1996-97 school year worked as follows. Debbie Easter drove 110 single routes and 34 double routes for a total of 149 routes. Duane Stark drove 31 single routes and 45 double routes for a total of 76 routes. Beverly Ray drove 35 single routes

¹ The sole exception to this statement (i.e. substitute Linda Sander) has previously been noted.

and 20 double routes for a total of 55 routes. Shirley Radford drove 22 single routes and 67 double routes for a total of 89 routes. James McCroy drove 15 single routes and 7 double routes for a total of 22 routes. McCroy started driving for the District in mid-April, 1997. Thus, he drove his 22 routes in the last six weeks of school. Mike Woolard drove 47 single routes and 198 double routes for a total of 245 routes. Lynn Sander drove 46 single routes and no double routes for a total of 46 routes. Alisha Sauer drove no single routes and 68 double routes for a total of 68 routes. Sonya Watkins drove 9 single routes and 204 double routes for a total of 213 routes. On average, these substitutes drove twice a week during the 1996-97 school year.

The District expects to use all of the substitutes referenced above in the 1997-98 school year with the exception of Watkins and Sauer, who both quit working for the District prior to the end of the 1996-97 school year.

Some of the District's bus drivers hold other jobs. A few work for the District in another capacity. For example, regular driver Weiss also works as a lunch attendant. Other drivers work for outside employers. As previously noted, when a substitute works for an outside employer, the substitute simply informs the District when they will not be available to drive due to their outside employment and the District does not call them while they are unavailable to work.

CONCLUSIONS OF LAW

Teamsters Local 610 has petitioned to be certified as the exclusive bargaining representative for a unit of bus drivers in the Festus School District.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case, there is no dispute per se as to the appropriateness of a unit of bus drivers. The only question which has been raised by the District regarding the composition of a bus driver unit

concerns the status of certain substitute drivers. Their status will be addressed below. Our ultimate finding concerning their status will be dispositive of whether the substitute drivers in question are included in or excluded from the bus driver unit. With this caveat, we hold that in the context of this case, a unit of bus drivers in the Festus School District is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

We begin our discussion by reviewing the terms “full-time” and “part-time”. The reason we are reviewing these terms is as follows. The Union’s proposed unit description, which is not opposed by the District, expressly references “full-time” and “part-time” bus drivers. The term full-time traditionally refers to employees who work 40 hours a week. Conversely, the term part-time traditionally refers to employees who work less than that. The District’s regular and substitute drivers do not fit neatly into the categories of full-time and part-time because the regular drivers work far less than 40 hours a week driving a bus, and the substitute drivers drive even less than the regular drivers do. Since neither the regular drivers nor the substitute drivers work 40 hours a week driving a bus, none are full-time and all are part-time if the traditional definitions of those terms are applied to the bus drivers. However, in this case, the parties use the term full-time to refer to the regular drivers and the term part-time to refer to the substitute drivers. We will do likewise.

That said, at issue here is whether the substitute drivers in question qualify as regular part-time employees so as to warrant inclusion with the regular drivers in a unit of bus drivers. The Union essentially contends that the substitute drivers are casual employees who do not share a community of interest with the regular drivers. The District disputes that assertion.

The record indicates that in the 1996-97 school year, the District had nine drivers who were categorized as substitutes. The District does not seek to include two of the nine (namely Watkins and Sauer) in the unit because they quit working for the District as substitute drivers

before the end of the 1996-97 school year. Thus, the District seeks to include these seven substitutes: Easter, Stark, Ray, Radford, McCroy, Woolard, and Sander. These are the only substitutes which the District seeks to include in the unit.

Based on the following, we find that these seven substitutes all qualify as regular part-time employees. First, the substitutes work under the same conditions as the regular drivers do in that they do the same work (pick up and deliver students to school), drive the same buses, drive the same routes, are supervised by the same people, receive the same rate of pay for any given route, and have the same qualifications (namely a commercial driver's license and a school bus driver's permit). Second, all of the substitutes involved here drove a substantial number of runs during the 1996-97 school year. While some substitutes drove more than others, and none have a preassigned route which they drove on a regular basis, the record indicates that the substitutes drove on average more than two runs per week in the 1996-97 school year. Third, all seven of the substitutes in issue have just as much of an expectation of continued employment with the District as the regular drivers do for the 1997-98 school year. These factors convince us that the seven substitutes in question are regular part-time employees.

Having so found, attention is turned to the Riverview Gardens School District² decision which the Union cites to support their position here. In Riverview Gardens, the Board excluded four substitutes from a unit of bus drivers. While many of the facts in that case are similar to those involved here, we believe there is one significance difference. That difference is the number of routes driven by the substitutes. In Riverview Gardens, the record does not indicate how many times the substitutes drove a route. Here, though, as previously noted, the record indicates that the substitutes drove twice a week on average during the last school year. We find this difference alone sufficient to distinguish the Riverview Gardens case from the instant one.

² Case No. 81-024 (SBM, 1982).

In conclusion then, we have found that the seven substitutes in question here qualify as regular part-time employees. As such, they possess a sufficient community of interest with the 22 regular drivers to be included with them in the same bargaining unit.

ORDER

The State Board of Mediation finds that the proposed unit of all regular full-time and regular part-time bus drivers is appropriate. The State Board of Mediation further finds that the seven substitutes at issue here are regular part-time employees. They are therefore included in that unit. An election is ordered therein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have Teamsters, Local 610 as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 29th day of October, 1997.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis R. Brady
Francis R. Brady, Chairman

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Lois Vander Waerd
Lois Vander Waerd, Employer Member